

## **DECISION OF DIRECTOR OF LIQUOR LICENSING**

**APPLICANT:** MONDAY MADNESS PTY LTD

**OTHER PARTIES:** CITY OF VINCENT (OBJECTOR)  
DR KIM PAYET (OBJECTOR)  
CHIEF HEALTH OFFICER (INTERVENOR)  
COMMISSIONER OF POLICE (INTERVENOR)

**PREMISES:** STIRLING SPECIALTY LIQUOR

**PREMISES ADDRESS:** CAMPUS PERTH, TENANCY 1, 80 STIRLING STREET  
PERTH

**APPLICATION ID:** A215792892

**MATTER:** APPLICATION FOR CONDITIONAL GRANT OF A LIQUOR  
STORE LICENCE

**DECISION OF:** PETER MINCHIN  
DIRECTOR LIQUOR CONTROL AND ARBITRATION

**DATE OF DETERMINATION:** 1 AUGUST 2019

**DATE OF REASONS:** 24 SEPTEMBER 2019

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### **Introduction**

- 1 On 1 August 2019, a notice pursuant to s 18AA of the *Liquor Control Act 1988* (the Act) was sent to the parties indicating that after consideration of the evidence and submissions presented, I had determined that the grant of the application was not in the public interest and therefore the application was refused.
- 2 Pursuant to s 18AA(3) of the Act, the applicant has requested written reasons for the decision. These are those reasons.

### **Background**

- 3 The applicant, Monday Madness Pty Ltd, lodged an application for the conditional grant of a liquor store licence for premises to be located at Campus Perth, Tenancy 1, 80 Stirling Street, Perth and to be known as Stirling Specialty Liquor. The application was made pursuant to ss 47 and 62 of the Act.
- 4 The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. Objections to the grant of the application were lodged by the City of Vincent and Dr Kim Payet while the Chief Health Officer and the Commissioner of Police both intervened in the application.
- 5 The application was determined on the written submissions of the parties as permitted under ss 13 and 16 of the Act. In addition, this decision has been prepared and should be

read in the context of a high-volume liquor jurisdiction which is to act as speedily and with as little formality and technicality as is practicable.<sup>1</sup>

### **Brief summary of the applicant's proposal**

- 6 The applicant wanted to establish a liquor store as part of the Stirling Market, which is a grocery store located at 80 Stirling Street, Perth. The proposed liquor store would occupy an area of approximately 27m<sup>2</sup> and operate separately from the grocery store with its own dedicated checkout for liquor products.
- 7 The applicant lodged a Public Interest Assessment (PIA) to support its application. It was stated in the applicant's PIA that the proposed liquor store will *"enhance the consumer's shopping experience by providing diversity, convenience and choice for consumers in the locality and shoppers of the Stirling Market."*
- 8 The PIA provided information on the profile of the locality surrounding the proposed liquor store; the venue and its operation; why the grant of the application is in the public interest; and addressed the matters set out in s 38(4) of the Act.
- 9 It was submitted by the applicant that the grant of the application was in the public interest for the following reasons:
  - the proposed premises will provide a convenient packaged liquor offering to complement the grocery amenity to be available at the Stirling Market;
  - it will be a modest sized liquor store catering to the requirements of consumers in the locality and offer a range of products with no heavy discounting and/or offering cheap liquor products;
  - the proposed liquor store will be separated from the supermarket by non-transparent barricading so that the liquor offering is separated from the grocery shoppers;
  - products will be provided to cater to the growing number of allergen and dietary sensitive consumers;
  - a selection of Asian liquor products will be provided to cater to the demographics of the local community;
  - there will be a product list that supports WA liquor producers;
  - there would be personalised service whereby consumers can order specific products; and
  - there would be a strict Harm Minimisation Plan in the interest of the public and to minimise any potential undue harm due to the use of liquor.

### **A brief summary of the objections**

#### *City of Vincent*

- 10 It was submitted by the City of Vincent that the grant of the application would not be in the public interest given the significant anti-social behaviour directly linked with alcohol

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<sup>1</sup> S 16(7) of the Act.

consumption and abuse in the locality, and more specifically, at Weld Square which is located less than 250 metres from the applicant's proposed premises.

- 11 According to the City of Vincent, service providers such as WA Police and the Nyoongar Outreach Service are faced with significant social challenges at Weld Square due to the large number of people experiencing homelessness and rough sleeping. Many of these people identify themselves as Aboriginal, and many display the clear symptoms and behaviours associated with alcohol abuse. It was submitted that while the specific number of people experiencing homelessness within the Perth inner-city area fluctuates, a survey conducted by RUAH in 2016 identified approximately 500 people sleeping rough.
- 12 It was noted by the City of Vincent that the PIA prepared by the applicant made no comment about the proximity of Weld Square and the existing prevalence of significant social issues in the locality and the PIA failed to recognise the large number of people experiencing homelessness and the significant social issues directly linked with alcohol accessibility and consumption.
- 13 It was submitted that the City of Vincent Rangers are required to attend Weld Square on a daily basis and the following observations reflect key issues over the last 12 months:
  - increased number of people displaying anti-social behaviour, including both verbal and physical violence;
  - increased prevalence of people under the influence of drugs and alcohol;
  - increased amounts of drug and alcohol paraphernalia reported in and around Weld Square by residents and businesses; and
  - increased amounts of bedding and personal items reported in and around Weld Square by residents and businesses.
- 14 The City of Vincent submitted that Weld Square is a Registered Aboriginal Site and has traditionally been used as a camping ground and meeting place and is therefore of great importance to the Whadjuk Noongar people. Consequently, Weld Square continues to attract a significant number of Aboriginal people, many of whom are sleeping rough and displaying the symptoms of behaviours associated with alcohol abuse.

*Dr Kim Payet*

- 15 Dr Payet submitted that there is already anti-social behaviour at Weld Square and the grant of a new liquor store licence in such close proximity would only add to this behaviour and place the public at further risk. It was further submitted that Weld Square and the surrounding area has a high population of homeless people and people at-risk of substance abuse. Businesses in the area are also affected by multiple disturbances by these at-risk individuals as well as the inconvenience of multiple break-ins.

## A brief summary of the interventions

### *Chief Health Officer*

- 16 The Chief Health Officer (CHO) made submissions and representations on the following matters:
- there are at-risk groups in the locality who currently experience alcohol-related harm;
  - local stakeholders advise that alcohol is a key contributor to issues experienced in the locality;
  - the proposed liquor store is near Weld Square, where at-risk groups congregate;
  - the proposed liquor store seeks to provide alcohol within a supermarket setting; and
  - the association of alcohol products and grocery items can lead to increased consumption and harm.
- 17 It was submitted by the CHO that it is relevant to consider the context of the environment in which the proposed liquor store will be operating and the potential for alcohol-related harm to occur in relation to that licence. In this regard, the CHO stated that there are services patronised by individuals experiencing alcohol-related harm and ill-health within the locality, specifically people gathering in public places such as Weld Square, which is within walking distance of the applicant's proposed premises. These services include:
- Nyoongar Outreach Service, a not-for-profit organisation that provides community-based outreach services in the Perth Metropolitan area, including Northbridge;
  - Manna, one of the largest providers of meals for the disadvantaged in Perth;
  - St Bartholomew's House, which provides accommodation and support services for single men over the age of 18 years, families and intensive support for those experiencing, or at risk of, homelessness;
  - Wungening Aboriginal Corporation, which provides support programs to youth, families, men and women who are experiencing alcohol and drug problems; and
  - Bridge House, which provides short term residential and non-residential rehabilitation services for those with alcohol and other drug issues.
- 18 According to the CHO, research demonstrates that people with a history of harmful alcohol use often experience difficulty securing reliable and affordable housing, which also affects gaining and retaining employment. Further, many experience a breakdown in family and social networks resulting in the withdrawal of financial support networks, which increases the risk of poverty. It was submitted that Weld Square attracts large numbers of people, mainly itinerants who are often affected by alcohol, to meet and eat. Those visiting Weld Square also experience life challenges that make them vulnerable and at-risk of harm. The applicant's premises will be near Weld Square.
- 19 The CHO also submitted that the proposed liquor store is situated on the ground floor of the Campus Perth development, which provides student accommodation for domestic and international students aged 17 years and older enrolled in a Perth university, vocational college, English school or registered training provider. In this regard, the CHO submitted that the premises is likely to be attractive to students who are living at the Campus Perth

and that risky drinking is common in younger cohorts. Further, literature suggests that international students experience poorer health and well-being than domestic students, which may increase the risk of engaging in health compromising behaviours such as alcohol use, due to educational and acculturation stressors.

- 20 The CHO also noted that the locality surrounding the proposed liquor store already experiences a level of alcohol-related harm, including violence. In the period 1 February 2018 to 28 February 2019, there were 1,011 reported assaults in the suburb of Perth, of which over one in four (26.7%) were alcohol-related.
- 21 It was submitted that research indicates that the availability of alcohol within a supermarket can facilitate increased purchasing (including impulse and unplanned purchases) and consumption, resulting in a risk of increased harm in the community.
- 22 The CHO recommended that if the application is approved, conditions be imposed on the licence to minimise the risk to the community.

#### *The Commissioner of Police*

- 23 The Commissioner of Police intervened in the application to provide information relating to the existing level of alcohol-related harm and crime in the locality and the current availability of packaged liquor.
- 24 The crime data provided by the Commissioner indicated that there are elevated levels of harm occurring in Perth and Northbridge. Although there has been a decrease in the recorded levels of some harm since 2016, current levels still sit much higher than the Metropolitan and State average. Northbridge experiences significantly higher than average non-domestic assault rate where alcohol is a contributing factor and every other statistic is significantly higher than the State average.
- 25 It was submitted by the Commissioner that there are currently 19 liquor stores in the locality surrounding the applicant's premises. In addition, there are numerous hotels and taverns which can also sell packaged liquor to the public. The Commissioner also submitted that most products the applicant proposes to sell are presently available in the area, including the unique and speciality liquor products outlined in the applicant's s PIA.

#### **Determination**

- 26 In concluding that the grant of the application was not in the public interest, I was guided by the following legal principles.
- 27 Pursuant to s 38(2) of the Act and r 9EA of the *Liquor Control Regulations 1989*, an applicant for the grant of a liquor store licence must satisfy the licensing authority that the grant of the application is in the public interest. Consequently, there is no presumption in favour of the grant of the application and the applicant must adduce sufficient evidence to discharge its burden under the Act.

- 28 The factual matters which I am bound to consider in determining whether the grant of the application is 'in the public interest', are those relevant to the primary and secondary objects of the Act, as set out in s 5.<sup>2</sup>
- 29 The primary objects of the Act are:
- to regulate the sale, supply and consumption of liquor;
  - to minimise harm caused to people, or any group of people, due to the use of liquor; and
  - to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.
- 30 The secondary objects of the Act are:
- to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State;
  - to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor;
  - to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act; and
  - to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor that are consistent with the interests of the community.
- 31 In respect of an objector and intervenor, s 73(10) of the Act states that the burden of establishing the validity of any objection lies on the objector, while an intervenor carries no onus to establish their assertions of fact or opinion.<sup>3</sup>
- 32 Consequently, in determining an application, it is necessary for me to evaluate the evidence presented by all parties and make findings and draw conclusions from the evidence (including any notorious facts) and apply the public interest criteria, in accordance with the statutory requirements, to the relevant circumstances of the application and to any findings or conclusions I have drawn.
- 33 According to the applicant, the grant of the application is in the public interest because the proposed liquor store will:
- provide a convenient packaged liquor offering to complement the grocery amenity to be available at Stirling Market;
  - be moderate in size and offer a range of products with no heavy discounting and/or offering cheap liquor products;
  - be separated from the supermarket;

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<sup>2</sup> *Woolworths v Director of Liquor Licensing* [2013] WASCA 227.

<sup>3</sup> *Re Gull Liquor, Gingers' Roadhouse Upper Swan* (1999) 20 SR (WA) 321, 340 (Greaves J);

- provide products that cater to the growing number of allergen and dietary sensitive consumers;
- offer a selection of Asian liquor products to cater to the demographics of the local community;
- provide a product list that promotes and supports WA liquor producers;
- offer personalised service through product order forms; and
- implement and enforce strict Harm Minimisation Plan in the interest of the public and to minimise any potential undue harm due to the use of liquor.

34 It is appropriate to make some immediate observations about the above claims by the applicant on why the grant of the application would be in the public interest:

- the Liquor Commission has stated on several occasions that convenience is just one factor to be considered in determining whether the proposal caters for the requirements of consumers as envisaged by s 5(1)(c) of the Act<sup>4</sup>;
- whilst the applicant indicates that it will be providing unique and speciality liquor products (i.e. Asian liquor, allergen and dietary specific), there is no evidence that the provision of these products will somehow be meeting the requirements of consumers or that consumers find it difficult to conveniently source these products. The applicant also states that low alcohol options and a selection of Asian liquor products will be available at the proposed liquor store which are not readily available in the locality (the applicant in its PIA named two Asian liquor products), however there is no evidence to support this claim. Asian liquor products are available at other premises in the locality (see for example LC 14/2018) and a wide variety of low-alcohol products are commonly available at packaged liquor outlets. In my view, the applicant will generally provide a standard, mainstream range of liquor products which is available at most packaged liquor outlets;
- the evidence indicates that there are 19 liquor stores and multiple hotels and taverns that sell packaged liquor in the locality surrounding the proposed liquor store; and
- whilst the applicant states that it will operate under a strict Harm Minimisation Plan, this is little more than the applicant complying with its obligations under the Act. In addition, there are errors in the documentation. For example, in its Harm Minimisation documents it is stated that all staff involved in the sale and supply of liquor will be trained in responsible sale practices, which will normally be achieved by completing in-house training provided to each staff member.<sup>5</sup> This does not meet the requirements under the Act, whereby pursuant to s 103A, all person engaged in the sale and supply of liquor must complete an accredited training course and the licensee must maintain a register of that training. However, the applicant indicates in its PIA that staff will complete the mandated RSA training. The applicant's Staff RSA Handbook states that the proposed liquor store will operate under a Hotel Licence and staff must hold a current responsible Service of Alcohol qualification. This document later refers to a Tavern Restricted Licence and how information will be displayed within the premises' toilets and behind the bar. Clearly, the applicant's

<sup>4</sup> See for example LC 14/2018 and LC 18/2015

<sup>5</sup> Applicant's Management Plan – 1.0 Staff Training and Responsible Service of Alcohol

Harm Minimisation documents contain errors and may be a 'cut and paste', nonetheless this is unhelpful and tends to undermine the probative value of these documents, upon which the applicant has placed heavy reliance.

- 35 The applicant also states that the proposed liquor store will provide a significant amount of convenience to those consumers who do not own or have access to a car, which is prevalent in the City of Perth where the analysis of car ownership in 2016 indicated that only 18% of households in the City of Perth had access to two or more motor vehicles compared to 57% in Greater Perth. However, the applicant appears to have been somewhat selective in its presentation of the data, which is derived from the Australian Bureau of Statistics. This data also indicates that 46.3% of households in the City of Perth have access to one motor vehicle (compared to 30.7% in Greater Perth); there has been little change in the data from 2011 to 2016 except that the number of persons who have no motor vehicle have in fact declined; and 17.4% of respondents in the City of Perth did not state the number of vehicles in the household compared to only 7.5% in Greater Perth.
- 36 To demonstrate that the grant of the application will promote object 5(1)(c) of the Act, the applicant gathered 108 consumer surveys. This survey would appear to be a web based, on-line survey. The questions in the survey are rudimentary, at best, and some questions are beyond the scope or knowledge of the respondents (i.e. impact on amenity and public interest). The Liquor Commission has previously expressed some reservations about the subjective views expressed in petitions and questionnaires and the weight to be afforded to such material.<sup>6</sup> This has been because, among other reasons, the outcome of surveys is dependent upon the method of selection and sampling of respondents, the objectivity of the surveys and petitions, the type of questions asked, and the geographical and demographic composition and nature of the locality. In my view, the applicant's questionnaire falls within the areas of concern described by the Liquor Commission and I find that the questionnaire evidence is of little probative value in the circumstances of this application.
- 37 At best, the survey indicates that some members of the public may find it convenient or may at some point in time have a desire to purchase liquor from the applicant's proposed store. Such a view or desire does not in itself justify the grant of an application. In LC 21/2015, the Liquor Commission stated that:

*"If convenience was seen to be meeting the "public interest" requirement, then the weight to be accorded to that factor would also need to be reviewed in the context of the proper development of the liquor industry. In that respect, the provision of liquor products in supermarkets, delicatessens, butchers, or other retail outlets where grocery items are purchased regularly, and at which it would merely be convenient to buy liquor, is viewed by the Commission as not being a sufficient reason to grant an application for a liquor store licence."*

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<sup>6</sup> See for example LC 6/2017



38 In a similar context, the Liquor Commission has also stated<sup>7</sup>:

*“A liquor outlet at every corner delicatessen or beside every supermarket or regularly visited retail outlet to satisfy the convenience of some members of the public is not what the community would countenance or expect, and would not be, in the Commission’s view, in accordance with the provisions and intent of the Act.”*

39 This approach is consistent with the statutory policy of regulation contained in object 5(1)(a). Heenan J in **Woolworths Ltd v Director of Liquor Licensing** [2012] WASC 384, said:

*“Whether any particular licence application will or will not contribute to the proper development of the liquor industry or whether it will facilitate the use and development of premises in a manner which reflects the diversity of the requirements of consumers in this State are questions of fact, degree and value judgement... I have previously concluded that the primary objects of the Act set out in s 5(1)(c) are not the only or the exclusive objects of the Act and, except to the extent of any inconsistency, do not restrict considerations of the public interest required by s 33(1) or s 38(2).*

*Because the appellant has emphasised the potential significance of the primary objects of the Act set out in s 5(1)(c), it is necessary to observe that another primary object specified by s 5(1)(a) is to regulate the sale, supply and consumption of liquor and that this statutory policy of regulation is entirely consistent with the measured approach to what may be regarded as contributing to the proper development of the liquor industry and to the facilitation of the use and development of licensed premises to reflect the diversity of requirements in this State. These considerations are inextricably linked with the public interest and cannot be properly addressed or applied without regard to it.”*

40 The Liquor Commission<sup>8</sup>, having quoted Heenan J in **Woolworths**, also said *“a measured approach requires a careful consideration of the broader public interest and simply because a service is as convenient, or more convenient than that currently available does not, of itself, satisfy the primary and secondary objects or the public interest as specified in the Act.”*

41 In **Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police** [2017] WASC 88, Bank-Smith J stated that object 5(1)(c) requires regard be directed to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State in considering the issue of catering for consumer requirements. The applicant submitted that to allow a small, non-destination liquor outlet alongside a supermarket in a locality that has a large number of high-density apartments is promoting

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<sup>7</sup> LC 18/2015

<sup>8</sup> LC 18/2015

object 5(1)(c). However, in assessing the applicant's evidence as a whole, and the fact that mere convenience, mainly for people using the Stirling Market, is a significant motivation for this application, I find that the applicant has failed to demonstrate how the grant of the application will assist in the proper development of the liquor industry, the tourism industry and other hospitality industries in the State. This is particularly so when the applicant submitted that the proposed liquor store will *"enhance the consumer's experience by providing diversity, convenience and choice of consumers in the locality and shoppers of the Stirling Market."*

- 42 In my view, diversity, choice and convenience already exist for people wanting to purchase packaged liquor in the locality.
- 43 Consequently, I am of the view that the applicant's evidence in terms of addressing object 5(1)(c) of the Act is less than compelling.
- 44 Object 5(1)(b) of the Act is directed towards minimising alcohol-related harm in the community. In this regard, the objectors and intervenors highlighted the presence of at-risk groups in the locality, particularly at Weld Square, and the current high rates of alcohol-related harm.
- 45 According to the applicant, it (via its representative) undertook extensive community consultation in the preparation of its application, however the applicant failed to disclose the presence of at-risk persons using Weld Square in its PIA. This omission undermines the veracity of the applicant's submissions. I note from the applicant's PIA that a copy of the application was provided to the Nyoongar Outreach Service, but there appears to be a lack of genuine engagement with this group particularly given the issues that exist at Weld Square.
- 46 In response to the matters raised by the objectors and interveners, the applicant stated that there are "limited" high risk factors in the locality and there will always be one or more high risk factors in any locality. With respect, this submission does little to support the application.
- 47 The evidence from the objectors and intervenors established that:
- Weld Square is near the applicant's premises (about 250 metres);
  - Weld Square is a gathering place for a large number of people, many of whom are Aboriginal, who experience social disadvantage and alcohol problems;
  - there are a high number of homeless people in the locality;
  - rangers from the City of Vincent attend Weld Square daily and problems with anti-social behaviour and people under the influence of alcohol or drugs is increasing;
  - there are service providers in the locality patronised by individuals experiencing alcohol-related harm and ill-health;
  - research demonstrates that people with a history of harmful alcohol use are more vulnerable and at-risk of harm;
  - the locality surrounding the proposed liquor store already experiences elevated rates of alcohol-related crime;

- the proposed liquor store will be situated on the ground floor of a student accommodation building; and
  - risky drinking is common in younger cohorts and international students may be more at risk than domestic students.
- 48 In LC/2018, which related to an application for the grant of a liquor store at 412 William Street, Perth, (about 850 metres from 80 Stirling Street) the Liquor Commission was satisfied that there were elevated levels of alcohol-related harm in the locality in various forms due to the use of liquor. The Liquor commission nonetheless granted the licence because it was satisfied that the particular characteristics of the proposed store, being a specialist Asian supermarket and providing only Asian liquor products, would present a low risk to the community. Those characteristics are not present in this application.
- 49 As I have already observed, the applicant proposes to mainly sell mainstream liquor products.
- 50 In respect of object 5(1)(b), it should be noted that the harm contemplated by the Act is not confined to just consumers of alcohol and extends to harm caused to people other than the consumer of liquor and includes an increase in anti-social or injurious behaviour.<sup>9</sup> This object also includes the harm caused to the health and well-being of individuals, families and communities, as well as social, cultural and economic harm.
- 51 Allanson J in ***Carnegies Realty Pty Ltd v Director of Liquor Licensing***<sup>10</sup> held that where object 5(1)(b) was relevant to the determination of an application there are four steps to be undertaken, namely:
- make findings that specifically identified the existing level of harm and ill-health in the relevant area due to the use of liquor;
  - make findings about the likely degree of harm to result from the grant of the application;
  - assess the likely degree of harm to result from the grant of the application against the existing degree of harm; and
  - weigh the likely degree of harm, so assessed, together with any other relevant factors to determine whether the applicant has satisfied the licensing authority that it was in the public interest to grant the application.
- 52 Based upon the data presented by the CHO, the Commissioner, the City of Vincent and the applicant in its PIA, I find that the locality surrounding the proposed liquor store presently experiences elevated rates of alcohol-related harm and that a significant number of at-risk persons, who experience alcohol-related harm and social dysfunction, habitually gather near the applicant's premises. Whilst I am mindful that the Perth CBD and Northbridge have a concentration of licensed premises, data from the applicant's PIA indicates that family assaults have been steadily increasing in the suburb of Perth from 2009 to 2018. Alcohol is a significant contributor to domestic violence.

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<sup>9</sup> ***Re Gull Liquor:***

<sup>10</sup> [2015] WASC 208.

- 53 When assessing the likely degree of harm to result from the grant of the application, Edelman J in **Liquorland (Australia) Pty Ltd v Executive Director of Public Health**<sup>11</sup> stated:

*‘In assessing the overall question of whether granting the application is in the public interest it is relevant to consider the baseline level of risk and, in that context, the effect of an increase in risk from the baseline level. It may be that where an existing level of risk is greater, a small increase in risk is less likely to be tolerated. Similarly, it is relevant that there are existing ‘at risk’ persons who might be further affected.’*

- 54 The applicant submitted that at-risk persons in the area would be more likely to patronise Dan Murphy’s Hyde Park than its premises, despite the substantial difference in distance, because of the availability of cheap liquor and earlier opening hours. I do not accept that submission. The CEO of the Nyoongar Outreach Service indicated that in her professional opinion, people who are affected and dependent on alcohol will drink alcohol regardless of price. Given the proximity of the applicant’s supermarket to Weld Square, it is possible that at-risk people may be attracted to either the applicant’s proposed liquor store or to the supermarket looking to purchase food and then be exposed to the availability of packaged liquor.
- 55 Whether harm or ill-health will in fact be caused to people, or any group of people, due to the use of liquor is a matter for the future and is essentially a matter of prediction.<sup>12</sup> As stated by the Full Court in **Executive Director of Health v Lily Creek International Pty Ltd**<sup>13</sup> the public interest considerations that underlie object 5(1)(b) indicate that the potential of harm and ill-health is to be taken into account irrespective of whether the prospect of harm or ill-health is a possibility or a probability. Further, evidence which merely establishes a potential for harm or ill-health is relevant and must be taken into account, even though the evidence does not establish that harm or ill-health will result on the balance of probability.
- 56 I find, on the balance of probability, that the applicant’s proposed liquor store is likely, over time, to contribute to the existing elevated rate of alcohol-related harm in the locality and presents a significant risk to at-risk persons who gather, or travel to and from, Weld Square. I make this finding notwithstanding the applicant’s initiatives in regard to limiting certain products for sale, later opening time and minimum price points, which in my view would not sufficiently mitigate the risks posed by the grant of the application.
- 57 The location of the proposed liquor store in a student accommodation building also poses a risk, given the evidence from the CHO detailed in [19] above. Students at Campus Perth are likely to shop at the proposed supermarket and be exposed to the impulse of purchasing packaged liquor at the applicant’s premises. Students are regarded as an at-risk group for alcohol-related harm.

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<sup>11</sup> [2013] WASC 51

<sup>12</sup> **Malec v JC Hutton Pty Ltd** (1990) 169 CLR 638

<sup>13</sup> [2000] WASCA 258

- 58 Object 5(1)(b) refers to minimising harm caused to people, or any group of people, due to the use of liquor (emphasis added).
- 59 Consequently, when I weigh and balance the positive and negative aspects of the application, I find that the marginal benefits to the public in terms of increased convenience, particularly in accessing packaged liquor adjacent to the applicant's supermarket, are outweighed by the potential risk posed by the grant of a new liquor store licence at this particular location.
- 60 For these reasons, I subsequently formed the view that the applicant had failed to discharge its onus under s 38(2) of the Act and satisfy me that the grant of the application was in the public interest. The application was therefore refused.
- 61 Parties to this matter dissatisfied with the outcome may seek a review of the Decision under s 25 of the Act. The application for review must be lodged with the Liquor Commission within one month after the date upon which the parties receive notice of this Decision.
- 62 This matter has been determined by me under delegation pursuant to s 15 of the Act.



Peter Minchin  
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING



Department of  
**Local Government, Sport  
and Cultural Industries**

Your Ref:

Our Ref: A215792892

Enquiries: Mary Ioannidis  
☎ (08) 6551 4957

Hospitality Total Services (Aus) Pty Ltd  
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By email: [Mario@hospitalitytotalservices.com.au](mailto:Mario@hospitalitytotalservices.com.au)

Dear Sir

**REASONS FOR REFUSAL - APPLICATION FOR CONDITIONAL GRANT OF A LIQUOR  
STORE LICENCE - STIRLING SPECIALTY LIQUOR**

Please find enclosed the decision relating to the above matter.

Should you have any queries please contact me on (08) 6551 4957.

Yours faithfully

Mary Ioannidis  
RESEARCH SUPPORT OFFICER

24 September 2019

[Enc]